that a legal duty devolved upon defendants to keep the passage reasonably safe. A like conclusion was reached and the same duty declared obligatory in *Murphy* v. *Leggett,* 164 N. Y. 121, 58 N. E. 42. Reasonable use is a question of fact depending on its temporary and necessary nature. *Callanan* v. *Gilman,* 107 N. Y. 360. Use of a sidewalk amounting to a nuisance, constitutes a proximate cause of an injury resulting therefrom. *Cohen* v. *Mayor,* 113 N. Y. 532. It was not necessary to prove that the banana came upon the sidewalk by acts of defendants. 21 AM. & ENG. ENCY. OF LAW, 2nd Ed., 492. When the intervening cause can be reasonably anticipated, the earlier negligent act, if contributing to the injuries may be regarded as the proximate cause. *Armour* v. *Golkowska,* 202 Ill. 144, 21 AM. & ENG. ENCY. OF LAW, 2nd Ed. 491.

TRUST—CERTAINTY OF LANGUAGE.—Where a testator devised all his estate to his wife, with the condition that there was to be applied to her own use a designated portion of the income, and so much of the residue, "As to her may seem proper, to be allowed to the assistance of" certain relatives of the testator. *Held,* (two justices dissenting) a valid trust was created, which, upon the failure of the donee to execute, would be administered in equity. *Prince* v. *Barrow* (1904), — Ga. —, 48 S. E. Rep. 412.

That no particular words are necessary to create a trust, seems clear; and the authorities are abundant to the effect, that where the donee is not to have the sole beneficial interest in the property, a trust is raised which equity will enforce. 28 AM. & ENG. ENC. LAW 666b; 2 POMEROY EQ. JUR., Sec. 1016; *Gordon* v. *Green,* 10 Ga. 534; *Norman* v. *Burnett,* 25 Miss. 183; *Jackson* v. *Fisher,* 10 Johns. 456; *Morse* v. *Morse,* 85 N. Y. 53. The difficulty lies in determining what is the intention of the donor in a particular case, and that this involves questions of no little perplexity is aptly illustrated in the principal case, by the entirely different views entertained by the minority of the court from those expressed by the majority, regarding the same instrument. In the following cases the language has been held sufficient to indicate an intention that a trust be established. *Phillips* v. *Phillips,* 112 N. Y. 197, 19 N. E 411; *Maxwell* v. *Hoppie,* 70 Ga. 152; *Bailey* v. *Kilburn,* 51 Mass. 176, 43 Am. Dec. 423. In *Lawrence* v. *Cook,* 104 N. Y. 632, holding, under a similar statement of facts to that given above, that no trust was raised, briefs collecting a large number of cases on each side of the question are given. See also *In re Gardner,* 140 N. Y. 122, 35 N. E. 439.

WAREHOUSEMEN—GOODS STORED IN PLACE DIFFERENT FROM THAT OF CONTRACT—WHEN LIABLE FOR LOSS.—The plaintiff made a contract with defendant whereby the latter was to store goods for plaintiff at a certain place. The plaintiff took out a policy of insurance upon the goods as being at the place where defendant had contracted to store them; but of this action, defendant was not notified. The goods were stored not at the place agreed upon, but in a different building controlled by defendant. While in this building, the goods, without any negligence on the part of defendant, were destroyed by fire. Plaintiff sued to recover on the theory that defendant had broken the bailment contract and exposed plaintiff's property to a risk not contemplated

nor assented to by plaintiff. There was a dispute as to whether or not the contract provided for the storing of the goods at a particular place; but the question, upon being submitted to the jury, was decided in favor of plaintiff. *Held,* that the defendant was guilty of a technical conversion of plaintiff's property and was therefore liable. *Hudson* v. *Columbian Transfer Co.* (1904), — Mich. —, 100 N. W. Rep. 402.

This decision is supported by *Martin* v. *Cuthbertson,* 64 N. C. 328; *Lane* v. *Cameron,* 38 Wis. 603; *Lilley* v. *Doubleday,* L. R. 7 Q. B. Div. 510; *Bradley* v. *Cuningham,* 61 Conn. 485, 23 Atl. 932, 15 L. R. A. 679; and by *Line* v. *Mills,* 12 Ind. App. 100, cited by the court in its decision. While this case involves some of the familiar principles of bailment law, there are but few decisions similar to it. *Lilley* v. *Doubleday, supra,* closely resembles it, but the court, in that case, based its judgment upon a breach of contract and not upon a conversion of goods. *Bradley* v. *Cuningham,* cited by the court, also has many points in common with this case, but is to be distinguished from it inasmuch as in that case there was no proved contract to store the goods in a particular place, and the court held that the bailor, upon taking out a policy of insurance upon his goods, should have notified the bailee of that fact. The general rule is that a warehouseman, who, without the consent of the bailor or owner, removes goods from the place agreed upon to another place of storage, may become liable for their loss. 28 AMER. & ENG. ENCYC. OF LAW 641; *Conover* v. *Wood,* 48 Minn. 438; *St. Losky* v. *Davidson,* 6 Cal. 644; SCHOULER'S BAILMENTS AND CARRIERS (3rd ed.), sec. 106.

WILLS—CHARITABLE TRUSTS—PRIVATE BURIAL LOT.—Among several provisions of a will, some of which were held valid and others void, was one directing that the burial lot of testatrix be kept in good repair by the executor, and that ten dollars be annually set aside and expended for this purpose. *Held,* that this provision is effective only during administration of the estate, and that thereafter said annual expenditure should cease. *Phillips* v. *Heldt* (1904), — Ind. App. —, 71 N. E. Rep. 520.

The decisions of the courts upon the validity of bequests in perpetual trust for the care and maintenance of private burial lots are in irreconcilable conflict. PERRY ON TRUSTS, 5th Ed. Vol II, § 706. UNDERHILL ON WILLS, Vol. II, § 823. The English decisions are uniform in holding such bequests in trust to be void, as being in conflict with the rule against perpetuities, and not falling within the exception of charitable trusts. BIGELOW'S JARMAN ON WILLS, 6th Ed.,* p. 169; *Doe* v. *Pitcher,* 6 Taunton 359; *Hoare* v. *Osborn,* L. R. 1 Eq. 585. Many of the courts of this country follow the English decisions, and avoid the trust if it contravenes the rule against perpetuities. *Johnson* v. *Holifield,* 79 Ala. 423. *Bates* v. *Bates,* 134 Mass. 110. *Piper* v. *Moulton,* 72 Me. 155. But a strong line of decisions in the United States takes the view that such trusts are so far charitable in their nature that their validity will be upheld. *Nauman* v. *Weidman,* 182 Pa. St. 263, 37 Atl. Rep. 863; *Swasey* v. *American Bible Society,* 57 Me. 523; *Gafney* v. *Kenison,* 64 N. H. 354, 10 Atl. Rep. 706.